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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/108,447	07/01/1998	GERALD N. COLEMAN	97-677	2408

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EXAMINER

MCAVOY, ELLEN M

ART UNIT	PAPER NUMBER
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1764

DATE MAILED: 04/14/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	09/108,447	COLEMAN ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Ellen M. McAvoy	1764	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 03 November 2005.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 31-53 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 31-53 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)             | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                                    |

***Continued Examination Under 37 CFR 1.114***

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicants' submission filed on 03 November 2005 has been entered.

***Specification***

The use of the trademarks "TERGITOL TMN-10", "NP-9EO", "NP-9EO", and "Neodol N1-5 Surfactant" and others have been noted in this application. They should be capitalized wherever they appear and be accompanied by the generic terminology.

Although the use of trademarks is permissible in patent applications, the proprietary nature of the marks should be respected and every effort made to prevent their use in any manner which might adversely affect their validity as trademarks.

***Claim Rejections - 35 USC § 112***

Claims 31-53 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. There does not appear to be support in the

specification for the lower amount of purified water of 26 % by weight of the fuel emulsion composition set forth in independent claim 31. This is a NEW MATTER rejection. In the specification on page 3, a lower amount of 28 weight percent is cited for the purified water component of the emulsion.

Claims 35, 36, 37 and 39 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 35, 36, 37 and 39 contains the trademark/trade names “TERGITOL TMN-10”, “NP-9EO”, “NP-9EO”, and “Neodol N1-5 Surfactant”. Where a trademark or trade name is used in a claim as a limitation to identify or describe a particular material or product, the claim does not comply with the requirements of 35 U.S.C. 112, second paragraph. See *Ex parte Simpson*, 218 USPQ 1020 (Bd. App. 1982). The claim scope is uncertain since the trademark or trade name cannot be used properly to identify any particular material or product. A trademark or trade name is used to identify a source of goods, and not the goods themselves. Thus, a trademark or trade name does not identify or describe the goods associated with the trademark or trade name. In the present case, the trademark/trade name is used to identify/describe various components in the fuel emulsion composition and, accordingly, the identification/description is indefinite.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

Art Unit: 1764

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 31-53 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dubin (5,284,492) in combination with Ford (3,756,794), Gunnerman (WO 95/27021) and Schwab (5,669,938).

Dubin discloses a fuel oil composition comprising an emulsion of water and a fuel oil which is used as a combustion fuel for a gas turbine which results in reduced nitrogen oxides emissions and improved combustion efficiency. The emulsion can be either a water-in-fuel oil or a fuel oil-in-water emulsion. The oil phase comprises a light fuel oil, by which is meant a fuel oil having little or no aromatic compounds and consists essentially of relatively low molecular weight aliphatic and naphthenic hydrocarbons. See column 3, lines 41-49. The emulsions which have the most practical significance in applications when combusted alone are those having about 5% to about 50% water and are preferably about 10% to about 35% water-in-fuel oil by weight. Although demineralized or purified water is not required, Dubin teaches that the use of demineralized water in the emulsion is preferred. See column 4, lines 7-35. An emulsification system is most preferably employed to maintain the emulsion. A desirable emulsification system comprises about 25% to about 85% by weight of an amide, especially an alkanolamide or n-substituted alkyl amine; about 5% to about 25% by weight of a phenolic surfactant including ethoxylated alkylphenols; and about 0% to about 40% by weight of a difunctional block polymer terminating in a primary hydroxyl group. The addition of a component selected from the group consisting of dimer and/or trimer acids, sulfurized castor oil, phosphate esters, and mixtures thereof significantly increase the lubricity of the emulsion.

Art Unit: 1764

The addition of a corrosion inhibitor is taught in column 8, lines 56 to column 9, line 2. Dubin differs from the instant claims in not teaching the addition of an ignition delay modifier including ammonium nitrate as an emulsion stabilizer and an antifreeze additive (dependent claim 51). However, as evidenced by Ford, Gunnerman and Schwab, such additives are well-known in hydrocarbon fuel emulsions.

Ford discloses emulsified fuel compositions comprising a hydrocarbon fuel such as diesel and gasoline fuels, an emulsifier, water and an emulsion stabilizer. Ammonium nitrate may be added to the emulsion as a freezing point depressant or an antifreeze additive in an amount of 0.1 to 10% by weight, preferably 0.3 to 0.7 % by weight. See column 1, line 49 to column 2, line 26.

Gunnerman discloses aqueous fuel compositions for internal combustion engines. The fuel comprises a fluid emulsion comprising 20 to 80 vol. % water which may be purified, 40 to 60 % carbonaceous fuel such as gasoline and diesel fuels, about 2 to less than 20 vol. % alcohol such as methanol and ethanol, and about 0.3 to 1 vol. % of a nonionic emulsifier. See page 1, lines 30-36. Freezing-point observations indicated a dramatic lowering of the freezing point as the percentage of alcohol is increased. See page 8, lines 17-19.

Schwab discloses diesel fuel emulsions containing an emission reducing amount of at least one fuel-soluble organic nitrate ignition improver such as 2-ethylhexyl nitrate.

It would have been obvious to the skilled artisan to have followed the teachings of the prior art and to have added the ammonium nitrate antifreeze additive of Ford, the organic nitrate ignition improver of Schwab, and the anti-freeze inhibitor of Gunnerman to the hydrocarbon fuel emulsion of Dubin in order to provide a hydrocarbon fuel emulsion having improved anti-freeze and ignition properties.

Art Unit: 1764

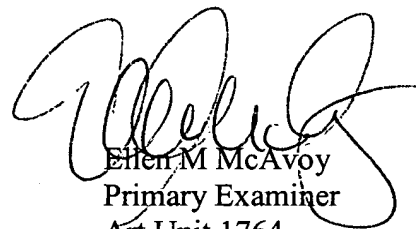
***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicants' disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ellen M. McAvoy whose telephone number is (571) 272-1451. The examiner can normally be reached on M-F (7:30-5:00) with alt. Fridays off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Glenn Caldarola can be reached on (571) 272-1444. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Ellen M. McAvoy  
Primary Examiner  
Art Unit 1764

EMcAvoy  
April 12, 2006